

1  
2  
3  
4  
5  
6  
7 UNITED STATES DISTRICT COURT  
8 CENTRAL DISTRICT OF CALIFORNIA  
9 WESTERN DIVISION  
10

11 MICHAEL LEE, ) No. CV 10-04449-JVS (VBK)  
12 )  
13 ) Petitioner, ) ORDER (1) ACCEPTING AND ADOPTING  
14 ) THE REPORT AND RECOMMENDATION OF  
15 ) THE UNITED STATES MAGISTRATE  
16 ) JUDGE, AND (2) DISMISSING THE  
17 ) PETITION FOR WRIT OF HABEAS  
18 ) CORPUS  
19 )  
20 )  
21 )  
22 )  
23 )  
24 )  
25 )  
26 )  
27 )  
28 )

17 Pursuant to 28 U.S.C. §636, the Court has made a de novo review  
18 of the Petition for Writ of Habeas Corpus ("Petition"), Respondent's  
19 Motion to Dismiss, Petitioner's Opposition, Respondent's Reply to  
20 Petitioner's Opposition, all of the records herein and the Report and  
21 Recommendation of the United States Magistrate Judge ("Report").

22 //

23 //

24 //

25 //

26 //

27 //

28 //

1       **IT IS ORDERED** that: (1) the Court accepts and adopts the Report  
 2 and Recommendation, (2) the Court declines to issue a Certificate of  
 3 Appealability ("COA");<sup>1</sup> and (3) Judgment be entered dismissing the  
 4 Petition with prejudice.



5  
 6 DATED: January 6, 2011

---

JAMES V. SELNA  
 UNITED STATES DISTRICT JUDGE

7  
 8  
 9  
 10  
 11  
 12  
 13  
 14  
 15       <sup>1</sup> Under 28 U.S.C. §2253(c)(2), a Certificate of Appealability  
 16 may issue "only if the applicant has made a substantial showing of the  
 17 denial of a constitutional right." Here, the Court has adopted the  
 18 Magistrate Judge's finding and conclusion that the Petition is time-  
 19 barred. Thus, the Court's determination of whether a Certificate of  
 20 Appealability should issue here is governed by the Supreme Court's  
 21 decision in Slack v. McDaniel, 529 U.S. 473, 120 S. Ct. 1595 (2000),  
 22 where the Supreme Court held that, "[w]hen the district court denies  
 a habeas petition on procedural grounds without reaching the  
 prisoner's underlying constitutional claim, a COA should issue when  
 the prisoner shows, at least, that jurists of reason would find it  
 debatable whether the petition states a valid claim of the denial of  
 a constitutional right and that jurists of reason would find it  
 debatable whether the district court was correct in its procedural  
 ruling." 529 U.S. at 484. As the Supreme Court further explained:

23       "Section 2253 mandates that both showings be made before the  
 24 court of appeals may entertain the appeal. Each component  
 25 of the § 2253(c) showing is part of a threshold inquiry, and  
 26 a court may find that it can dispose of the application in  
 a fair and prompt manner if it proceeds first to resolve the  
 issue whose answer is more apparent from the record and  
 arguments." Id. at 485.

27       Here, the Court finds that Petitioner has failed to make the  
 28 requisite showing that "jurists of reason would find it debatable  
 whether the district court was correct in its procedural ruling."